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10 **UNITED STATES DISTRICT COURT**  
11 **DISTRICT OF ARIZONA**

12 Grand Canyon West Ranch LLC,  
13 Plaintiff/Counter-Defendant,  
14 v.  
15 Sally Jewell, Secretary, United States  
16 Department of Interior, *et al.*,  
17 Defendant/Counter-Claimant.

**CIV-03-02496-PCT-NVW**

**ANSWER, AFFIRMATIVE  
DEFENSES AND  
COUNTERCLAIMS**

18 Comes now the Defendant, Sally Jewell, Secretary, United States Department of  
19 Interior, (hereinafter the “Defendant,” or “United States”), and, pursuant to Fed. R. Civ. P.  
20 15(a)(3) and 13(a)-(b), files its Answer, Affirmative Defenses, and Counterclaims in  
21 response to Plaintiff’s Second Amended Complaint (“SAC”). (Doc. No. 195).  
22

23 **I UNITED STATES’ ANSWER**

24 **Parties, Jurisdiction, and Venue**

25 1. The United States lacks information sufficient to admit or deny the  
26 allegations in Paragraph 1 of Plaintiff’s SAC and therefore DENIES the same.  
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1           2.       The allegations in Paragraph 2 of Plaintiff's SAC are statements of legal  
2 capacity to suit to which no answer is required. Inasmuch as an answer is required, the  
3 United States ADMITS only that Secretary Jewell is the current Secretary of the U.S.  
4 Department of the Interior. The United States DENIES all other allegations in Paragraph  
5 2.

6           3.       The allegations in Paragraph 3 of Plaintiff's SAC are statements of legal  
7 capacity to suit to which no answer is required. Inasmuch as an answer is required, the  
8 United States ADMITS only that Mr. Kornze is the current Principal Deputy Director for  
9 the Bureau of Land Management. The United States DENIES all other allegations in  
10 Paragraph 3. The United States further avers that the BLM is not an entity to suit in this  
11 case. The Bureau of Indian Affairs, not the Bureau of Land Management, is the proper  
12 entity at issue.

13           4.       The allegations in Paragraph 4 of Plaintiff's SAC are statements relating to  
14 Plaintiff's characterization of the Defendant to which no answer is required. Inasmuch as  
15 an answer is required, the United States DENIES the allegations in Paragraph 4.

16           5.       The allegations in Paragraph 5 of Plaintiff's SAC are statements of legal  
17 capacity to suit to which no answer is required. Inasmuch as an answer is required, the  
18 United States DENIES the allegations in Paragraph 5. The United States further avers that  
19 fictitious defendants are not allowed in the federal system and, therefore, Defendant Does  
20 should be dismissed.

21           6.       The allegations in Paragraph 6 of Plaintiff's SAC are statements law to  
22 which no answer is required. Inasmuch as an answer is required, the United States  
23 DENIES the allegations in Paragraph 6.

24           7.       The allegations in Paragraph 7 of Plaintiff's SAC are statements law to  
25 which no answer is required. Inasmuch as an answer is required, the United States  
26 DENIES the allegations in Paragraph 7.  
27  
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1           8.       The allegations in Paragraph 8 of Plaintiff's SAC are statements law to  
2 which no answer is required. Inasmuch as an answer is required, the United States  
3 DENIES the allegations in Paragraph 8.

4  
5           9.       The allegations in Paragraph 9 of Plaintiff's SAC are not statements of fact  
6 to which an answer is required. Inasmuch as an answer is required, the United States  
7 DENIES the allegations in Paragraph 9.

8                                   **Plaintiff's General Allegations**

9           10.      The United States lacks information sufficient to admit or deny the  
10 allegations in Paragraph 10 of Plaintiff's SAC, especially as to the specific geographic  
11 boundaries of the Ranch's property. As to the Ranch's lease agreements, the terms of the  
12 lease agreements at issue speak for themselves and provide the best evidence of their  
13 contents. The United States therefore DENIES the allegations of Paragraph 10.

14          11.      The United States lacks information sufficient to admit or deny the  
15 allegations in Paragraph 11 of Plaintiff's SAC and therefore DENIES the same.

16          12.      The United States lacks information sufficient to admit or deny the  
17 allegations in Paragraph 12 of Plaintiff's SAC and therefore DENIES the same.

18          13.      The United States lacks information sufficient to admit or deny the  
19 allegations in Paragraph 13 of Plaintiff's SAC and therefore DENIES the same.

20  
21          14.      The United States lacks information sufficient to admit or deny the  
22 allegations in Paragraph 14 of Plaintiff's SAC and therefore DENIES the same.

23          15.      The United States lacks information sufficient to admit or deny the  
24 allegations in Paragraph 15 of Plaintiff's SAC and therefore DENIES the same.

25          16.      The United States lacks information sufficient to admit or deny the  
26 allegations in Paragraph 16 of Plaintiff's SAC and therefore DENIES the same.

27          17.      The United States lacks information sufficient to admit or deny the  
28 allegations in Paragraph 17 of Plaintiff's SAC and therefore DENIES the same.

1           18.       The United States DENIES the allegations of Paragraph 18 of Plaintiff's  
2 SAC.

3           19.       The United States ADMITS only that the western and northern boundaries  
4 of Ranch property are adjacent to the BLM's Joshua Tree Forest Area of Critical  
5 Environmental Concern. The United States DENIES all remaining portions of Paragraph  
6 19.

7           20.       The United States DENIES the allegations of Paragraph 20 of Plaintiff's  
8 SAC.

9           21.       Without citation to the reports on which Plaintiff relies, the United States  
10 lacks information sufficient to admit or deny the allegations in Paragraph 21 of Plaintiff's  
11 SAC and therefore DENIES the same. The United States avers that the U.S. Department of  
12 Agriculture classifies Joshua Trees as having "moderate" growth.

13           22.       The United States lacks information sufficient to admit or deny the  
14 allegations in Paragraph 22 of Plaintiff's SAC and therefore DENIES the same.

15           23.       The United States lacks information sufficient to admit or deny the  
16 allegations in Paragraph 23 of Plaintiff's SAC and therefore DENIES the same.

17           24.       The United States DENIES the allegations of Paragraph 24 of Plaintiff's  
18 SAC.

19           25.       The United States lacks information sufficient to admit or deny the  
20 allegations in Paragraph 25 of Plaintiff's SAC and therefore DENIES the same.

21           26.       The United States ADMITS that the BLM, Kingman Field Office  
22 published a document entitled "Final Environmental Impact Statement Diamond Bar Road  
23 Improvement" in or around May 2002. The United States DENIES the remainder of the  
24 allegations in Paragraph 26 of Plaintiff's SAC.

25           27.       The United States DENIES the allegations of Paragraph 27 of Plaintiff's  
26 SAC.

1           28.     The terms within the FEIS at issue is speak for themselves and provide the  
2 best evidence of the document's contents. The United States therefore DENIES the  
3 allegations of Paragraph 28.

4           29.     The terms of any Right of Way at issue speak for themselves and provide the  
5 best evidence of those documents' contents. The United States therefore DENIES the  
6 allegations of Paragraph 29.

7           30.     The United States ADMITS that the Ranch initiated a lawsuit against  
8 several federal entities in or about 2003. The United States DENEIS the remaining  
9 allegations of Paragraph 30 of Plaintiff's SAC.

10          31.     The United States ADMITS that the parties to Case No. CIV-03-02496  
11 entered into a Settlement Agreement in or about June 2007. The terms of the Settlement  
12 Agreement at issue speak for themselves and provide the best evidence of their content.  
13 The United States therefore DENIES the remaining allegations of Paragraph 31.

14          32.     The United States lacks information sufficient to admit or deny the  
15 allegations in Paragraph 32 of Plaintiff's SAC and therefore DENIES the same.

16          33.     The terms of the Settlement Agreement at issue speak for themselves and  
17 provide the best evidence of their content. The United States therefore DENIES the  
18 allegations of Paragraph 33.

19          34.     The terms of the Settlement Agreement at issue speak for themselves and  
20 provide the best evidence of their content. The United States therefore DENIES the  
21 allegations of Paragraph 34.

22          35.     The terms of the FEIS speak for themselves and provide the best evidence  
23 of their content. The United States therefore DENIES the allegations of Paragraph 35. The  
24 United States further avers that the FEIS is not a binding document on the Government.

25          36.     The terms of the FEIS speak for themselves and provide the best evidence  
26 of their content. The United States therefore DENIES the allegations of Paragraph 36. The  
27 United States further avers that the FEIS is not a binding document on the Government.  
28

1           37.     The terms of the FEIS speak for themselves and provide the best evidence  
2 of their content. The United States therefore DENIES the allegations of Paragraph 37. The  
3 United States further avers that the FEIS is not a binding document on the Government.

4           38.     The terms of the FEIS speak for themselves and provide the best evidence  
5 of their content. The United States therefore DENIES the allegations of Paragraph 38. The  
6 United States further avers that the FEIS is not a binding document on the Government.

7           39.     The terms of the Settlement Agreement speak for themselves and provide  
8 the best evidence of their content. The United States therefore DENIES the allegations of  
9 Paragraph 39.

10          40.     The terms of the Settlement Agreement speak for themselves and provide  
11 the best evidence of their content. The United States therefore DENIES the allegations of  
12 Paragraph 40.

13          41.     The terms of the Settlement Agreement speak for themselves and provide  
14 the best evidence of their content. The United States therefore DENIES the allegations of  
15 Paragraph 41.

16          42.     The United States DENIES the allegations of Paragraph 42 of Plaintiff's  
17 SAC. The United States further avers that it is unable to answer on behalf of co-  
18 Defendant Mohave County.

19          43.     The terms of the Settlement Agreement speak for themselves and provide  
20 the best evidence of their content. The United States therefore DENIES the allegations of  
21 Paragraph 43.

22          44.     The terms of the Settlement Agreement speak for themselves and provide  
23 the best evidence of their content. The United States therefore DENIES the allegations of  
24 Paragraph 44.

25          45.     The allegations in Paragraph 45 are conclusions of law and do not require  
26 an answer. To the extent an answer is required, the United States DENIES the allegations  
27 of Paragraph 45 of Plaintiff's SAC.  
28

1           46.     The United States ADMITS that the Ranch granted the BIA a Right of Way  
2     ("ROW"). The terms of the ROW speak for themselves and provide the best evidence of  
3     their content. The United States therefore DENIES the remaining allegations of Paragraph  
4     46.

5  
6           47.     The terms of the ROW and Settlement Agreement speak for themselves and  
7     provide the best evidence of their content. The United States therefore DENIES the  
8     allegations of Paragraph 47.

9  
10          48.     The United States lacks information sufficient to admit or deny the  
11     allegations in Paragraph 48 of Plaintiff's SAC and therefore DENIES the same.

12          49.     The United States lacks information sufficient to admit or deny the  
13     allegations in Paragraph 49 of Plaintiff's SAC and therefore DENIES the same.

14  
15          50.     The United States it is unable to answer on behalf of co-Defendant Mohave  
16     County and therefore DENIES the allegations of Paragraph 50 of Plaintiff's SAC.

17          51.     The terms of the ROW speak for themselves and provide the best evidence  
18     of their content. The United States therefore DENIES the allegations of Paragraph 51.

19          52.     The United States ADMITS the allegations of Paragraph 52 of Plaintiff's  
20     SAC.

21  
22          53.     The United States DENIES the allegations of Paragraph 53 of Plaintiff's  
23     SAC. The United States further avers that it is unable to answer on behalf of co-Defendant  
24     Mohave County.

25  
26          54.     The United States DENIES the allegations of Paragraph 54 inasmuch as it  
27     places the Hualapai Tribe in a subservient position to the BIA. The United States has no  
28

1 control over the actions of the Hualapai Tribe, as the Tribe is an independent, sovereign,  
2 nation. The United States ADMITS that the Hualapai Tribe has a contractual relationship  
3 with Fann Contracting. As to that contract, the terms of the contract speak for themselves  
4 and provide the best evidence of their content. The United States therefore DENIES the  
5 remaining portions of Paragraph 54 of Plaintiff's SAC.  
6

7 55. The United States DENIES the allegations of Paragraph 55 of Plaintiff's  
8 SAC.  
9

10 56. The terms of any contract between the Hualapai Tribe and Fann Contracting  
11 at issue speak for themselves and provide the best evidence of those documents' contents.  
12 The United States therefore DENIES the allegations of Paragraph 56 of Plaintiff's SAC.  
13

14 57. The United States cannot answer as to the intent of non-parties to this  
15 litigation and lacks information sufficient to admit or deny Plaintiff's allegations. The  
16 Defendant therefore DENIES the allegations of Paragraph 57 of Plaintiff's SAC.  
17

18 58. The United States has no control over the actions of the Hualapai Tribe, as  
19 the Tribe is an independent, sovereign, nation. Defendant therefore DENIES the  
20 allegations of Paragraph 58 of Plaintiff's SAC.  
21

22 59. The terms of any contract between the Hualapai Tribe and Fann Contracting  
23 at issue speak for themselves and provide the best evidence of those documents' contents.  
24 The United States therefore DENIES the allegations of Paragraph 59 of Plaintiff's SAC.  
25

26 60. The United States DENIES the allegations of Paragraph 60 inasmuch as it  
27 places the Hualapai Tribe in a subservient position to the BIA. The United States has no  
28



1 control over the actions of the Hualapai Tribe, as the Tribe is an independent, sovereign,  
2 nation.

3         61. The terms of the Settlement Agreement and ROW at issue speak for  
4 themselves and provide the best evidence of those documents' contents. The United States  
5 therefore DENIES the allegations of Paragraph 61 of Plaintiff's SAC.  
6

7         62. The terms of the Settlement Agreement and ROW at issue speak for  
8 themselves and provide the best evidence of those documents' contents. The United States  
9 therefore DENIES the allegations of Paragraph 62 of Plaintiff's SAC.  
10

11         63. The allegations in Paragraph 63 are conclusions of law to which no answer  
12 is required. Inasmuch as an answer is required, the United States DENIES the allegations  
13 of Paragraph 63.

14         64. The United States DENIES the allegations of Paragraph 64. The United  
15 States further DENIES that it has a legal obligation to supervise any work performed by  
16 Fann Contracting.  
17

18         65. The United States DENIES the allegations of Paragraph 65 of Plaintiff's  
19 SAC.  
20

21         66. The United States ADMITS only that a temporary, bypass road was created  
22 within the scope of the ROW across the Ranch property following Plaintiff's obstructing  
23 vehicular traffic in and around Memorial Day weekend, 2013. The United States DENIES  
24 the remaining allegations of Paragraph 66.  
25  
26  
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1           67.     The allegations in Paragraph 67 are conclusions of law and do not require  
2 an answer. To the extent an answer is required, the United States DENIES the allegations  
3 of Paragraph 67 of Plaintiff's SAC.

4           68.     The United States DENIES the allegations of Paragraph 68 of Plaintiff's  
5 SAC.

6           69.     The United States DENIES the allegations of Paragraph 69 of Plaintiff's  
7 SAC.

8           70.     The United States DENIES the allegations of Paragraph 70 of Plaintiff's  
9 SAC.

10          71.     The United States DENIES the allegations of Paragraph 71 of Plaintiff's  
11 SAC.

12          72.     The United States avers that the bypass road was never meant to encompass  
13 the complete road across Plaintiff's property and was only constructed following  
14 Plaintiff's obstructing vehicular traffic in and around Memorial Day weekend, 2013. The  
15 United States further avers that the plans as a whole do encompass the amenities set forth  
16 in the Settlement Agreement, and accordingly DENIES the allegations of Paragraph 72 of  
17 Plaintiff's SAC.

18          73.     The United States DENIES the allegations of Paragraph 73 of Plaintiff's  
19 SAC.

20          74.     The United States DENIES the allegations of Paragraph 74 of Plaintiff's  
21 SAC,

22          75.     The United States DENIES the allegations of Paragraph 75 of Plaintiff's  
23 SAC.

1           76.     The United States DENIES the allegations of Paragraph 76 of Plaintiff's  
2 SAC.

3           77.     The United States DENIES the allegations of Paragraph 77 of Plaintiff's  
4 SAC.

5           78.     The United States has no control over the actions of the Fann Contracting,  
6 as the Defendant has no privity of contract with Fann. Defendant therefore DENIES the  
7 allegations of Paragraph 78 of Plaintiff's SAC.

8           79.     The United States has no control over the actions of the Fann Contracting,  
9 as the Defendant has no privity of contract with Fann. Defendant therefore DENIES the  
10 allegations of Paragraph 79 of Plaintiff's SAC.

11           80.     The United States lacks information sufficient to admit or deny the  
12 allegations in Paragraph 80 of Plaintiff's SAC and therefore DENIES the same.

13           81.     Defendant DENIES the allegations of Paragraph 81 of Plaintiff's SAC.

14           82.     Defendant DENIES the allegations of Paragraph 82 of Plaintiff's SAC.

15           83.     The United States avers that it complied with all requirements of the Native  
16 American Graves Protection and Repatriation Act and therefore DENIES the allegations  
17 of Paragraph 83 of Plaintiff's SAC.

18           84.     The United States DENIES the allegations of Paragraph 84 of Plaintiff's  
19 SAC.

20           85.     The United States has no control over the actions of the Hualapai Tribe or  
21 Fann Contracting and accordingly DENIES the allegations of Paragraph 85 of Plaintiff's  
22 SAC.

1           86.     The United States has no control over the actions of Mohave County or  
2 Fann Contracting and cannot answer on behalf of the co-defendant. The United States  
3 further DENIES the allegations of Paragraph 86 of Plaintiff's SAC.

4           87.     The United States DENIES the allegations of Paragraph 87 of Plaintiff's  
5 SAC.

6           88.     The United States DENIES the allegations of Paragraph 88 of Plaintiff's  
7 SAC.

8           89.     The United States lacks information sufficient to admit or deny the  
9 allegations in Paragraph 89 of Plaintiff's SAC and therefore DENIES the same.

10          90.     The United States lacks information sufficient to admit or deny the  
11 allegations in Paragraph 90 of Plaintiff's SAC and therefore DENIES the same.

12          91.     The United States cannot answer on behalf of co-defendant Mohave  
13 County. The United States DENIES the allegations in Paragraph 91 of Plaintiff's SAC.

14          92.     The terms of any contract Fann has with the Hualapai Tribe speak for  
15 themselves and provide the best evidence of their content. The United States therefore  
16 DENIES the allegations of Paragraph 92.

17          93.     The United States DENIES the allegations of Paragraph 93.

18          94.     The United States cannot answer on behalf of co-defendant Mohave  
19 County. The United States DENIES the allegations in Paragraph 94 of Plaintiff's SAC.

20          95.     The United States cannot answer on behalf of co-defendant Mohave  
21 County, Fann Contracting, or the Hualapai Tribe. The United States DENIES the  
22 allegations in Paragraph 95 of Plaintiff's SAC.

1           96.     The United States lacks information sufficient to admit or deny the  
2 allegations in Paragraph 96 of Plaintiff's SAC and therefore DENIES the same.

3           97.     The United States lacks information sufficient to admit or deny the  
4 allegations in Paragraph 97 of Plaintiff's SAC and therefore DENIES the same.

5           98.     The United States DENIES the allegations in Paragraph 98 of Plaintiff's  
6 SAC.

7           99.     The United States is unable to answer the allegations of Paragraph 99, as  
8 the term "active construction" has no legal meaning. The United States DENIES the  
9 allegations of Paragraph 99 of Plaintiff's SAC.

10          100.    The United States ADMITS that Fann employees are present on the jobsite,  
11 but the Defendant has no control over their actions or direct information on the time and  
12 days of Fann's activities. Without sufficient information, the United States therefore  
13 DENIES the allegations of Paragraph 100 of Plaintiff's SAC.

14          101.    The United States DENIES the allegations of Paragraph 101 of Plaintiff's  
15 SAC.

16          102.    The United States ADMITS only that some dust is created by automobiles  
17 traveling on the bypass road. The Defendant avers, however, that Fann Contracting has  
18 employed sufficient dust control measures to address the issue. The United States DENIES  
19 the remaining allegations of Paragraph 102.

20          103.    The United States lacks information sufficient to admit or deny the  
21 allegations in Paragraph 103 of Plaintiff's SAC and therefore DENIES the same.

1           104.    The United States DENIES the allegations of Paragraph 104 of Plaintiff's  
2 SAC.

3           105.    The United States lacks information sufficient to admit or deny the  
4 allegations in Paragraph 105 of Plaintiff's SAC and therefore DENIES the same.  
5

6           106.    The United States avers that the accident referenced in Paragraph 106  
7 occurred over thirty miles away from the construction site. It is irrelevant and should be  
8 stricken pursuant to Fed. R. Civ. P. 12(f). Inasmuch as necessary and because the accident  
9 has nothing to do with the construction at issue, the United States DENIES the allegations  
10 of Paragraph 106 of Plaintiff's SAC.  
11

12           107.    The United States DENIES the allegations of Paragraph 107 of Plaintiff's  
13 SAC.

14           108.    The United States lacks information sufficient to admit or deny the  
15 allegations in Paragraph 108 of Plaintiff's SAC and therefore DENIES the same.  
16

17           109.    The United States DENIES the allegations of Paragraph 109 of Plaintiff's  
18 SAC.

19           110.    The United States DENIES the allegations of Paragraph 110 of Plaintiff's  
20 SAC.  
21

22           111.    The United States DENIES the allegations of Paragraph 111 of Plaintiff's  
23 SAC.  
24

25           112.    The United States DENIES the allegations of Paragraph 112 of Plaintiff's  
26 SAC.  
27  
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1           113.    The United States DENIES the allegations of Paragraph 113 of Plaintiff's  
2 SAC.

3           114.    The United States DENIES the allegations of Paragraph 114 of Plaintiff's  
4 SAC.

5           115.    The United States lacks information sufficient to admit or deny the  
6 allegations in Paragraph 115 of Plaintiff's SAC and therefore DENIES the same.

7           116.    The United States DENIES the allegations of Paragraph 116 of Plaintiff's  
8 SAC.

9           117.    The United States DENIES the allegations of Paragraph 117 of Plaintiff's  
10 SAC.

11           118.    The United States is not a party to the agreement between Fann and the  
12 Ranch to access water and refers the Court to the lawsuit between those parties, captioned  
13 at CIV-13-1855, District of Arizona. The United States further avers that is has no control  
14 over Fann Contracting because it is not in privity of contract with Fann. The United States  
15 DENEIS the allegations of Paragraph 118 of Plaintiff's SAC.

16           119.    The United States is not a party to the agreement between Fann and the  
17 Ranch to access water and refers the Court to the lawsuit between those parties, captioned  
18 at CIV-13-1855, District of Arizona. The United States further avers that is has no control  
19 over Fann Contracting because it is not in privity of contract with Fann. The United States  
20 DENEIS the allegations of Paragraph 119 of Plaintiff's SAC.

21           120.    The United States lacks information sufficient to admit or deny the  
22 allegations in Paragraph 120 of Plaintiff's SAC and therefore DENIES the same.

1           121.    The United States lacks information sufficient to admit or deny the  
2 allegations in Paragraph 121 of Plaintiff's SAC and therefore DENIES the same.

3           122.    The United States lacks information sufficient to admit or deny the  
4 allegations in Paragraph 122 of Plaintiff's SAC and therefore DENIES the same.

5  
6           123.    The United States is not a party to the agreement between Fann and the  
7 Ranch to access water and refers the Court to the lawsuit between those parties, captioned  
8 at CIV-13-1855, District of Arizona. The United States further avers that is has no control  
9 over Fann Contracting because it is not in privity of contract with Fann. The United States  
10 lacks information sufficient to admit or deny the allegations in Paragraph 123 of Plaintiff's  
11 SAC and therefore DENIES the same.

12  
13           124.    The United States avers that is has no control over Fann Contracting  
14 because it is not in privity of contract with Fann. The United States ADMITS only, on  
15 information and belief, that Fann has conducted blasting activities necessary to effectuate  
16 construction of New Diamond Bar Road. The United States DENIES the remaining  
17 allegations of Paragraph 124 of Plaintiff's SAC.

18  
19           125.    The United States lacks information sufficient to admit or deny the  
20 allegations in Paragraph 125 of Plaintiff's SAC and therefore DENIES the same.

21  
22           126.    The United States avers that is has no control over Fann Contracting or the  
23 Hualapai Tribe. The United States DENIES the allegations of Paragraph 126 of Plaintiff's  
24 SAC.



1           127.    The United States avers that it has no control over Fann Contracting or the  
2 Hualapai Tribe. The United States DENIES the allegations of Paragraph 127 of Plaintiff's  
3 SAC.

4           128.    The United States DENIES the allegations of Paragraph 128 of Plaintiff's  
5 SAC.

6           129.    The United States DENIES the allegations of Paragraph 129 of Plaintiff's  
7 SAC.

8           130.    The United States lacks information sufficient to admit or deny the  
9 allegations in Paragraph 130 of Plaintiff's SAC and therefore DENIES the same.

10           131.   The United States DENIES the allegations in Paragraph 131 of Plaintiff's  
11 SAC.

12           132.   The United States avers that it has no control over Fann Contracting or the  
13 Hualapai Tribe. The United States DENIES the allegations of Paragraph 132 of Plaintiff's  
14 SAC.

15           133.   The United States DENIES the allegations of Paragraph 133 of Plaintiff's  
16 SAC.

17           134.   The United States DENIES the allegations of Paragraph 134 of Plaintiff's  
18 SAC.

19           135.   The United States ADMITS only that Plaintiff began obstructing vehicular  
20 traffic over Old Diamond Bar Road in and around Memorial Day weekend, 2013, and  
21 charged a toll to the traveling public. The United States DENIES the remaining allegations  
22 of Paragraph 135 of Plaintiff's SAC.

1           136.     The United States DENIES the allegations of Paragraph 136 of Plaintiff's  
2 SAC, as the alternative route to the Hualapai Nation's Skywalk attraction is inaccessible to  
3 the majority of non-four wheeled drive vehicles.

4           137.     The allegations of Paragraph 137 are conclusions of law to which no  
5 answer is required. Inasmuch as an answer is necessary, the United States DENIES the  
6 allegations of Paragraph 137 of Plaintiff's SAC.

7           138.     The United States lacks information sufficient to admit or deny the  
8 allegations in Paragraph 138 of Plaintiff's SAC and therefore DENIES the same. The  
9 United States further avers that it has no control over the actions of the Hualapai Tribe, as  
10 the Tribe is a sovereign Nation.

11           139.     The United States lacks information sufficient to admit or deny the  
12 allegations in Paragraph 139 of Plaintiff's SAC and therefore DENIES the same. The  
13 United States further avers that it has no control over the actions of co-defendant Mohave  
14 County.

15           140.     The United States lacks information sufficient to admit or deny the  
16 allegations in Paragraph 140 of Plaintiff's SAC and therefore DENIES the same. The  
17 United States further avers that it has no control over the actions of the Hualapai Tribe or  
18 co-defendant Mohave County.

19           141.     The United States DENIES the allegations of Paragraph 141 of Plaintiff's  
20 SAC. The Defendant further avers that it has no control over the actions of the Hualapai  
21 Tribe or Fann Contracting.

1           142. The allegations in Paragraph 142 are conclusions of law to which no answer  
2 is required. Inasmuch as an answer is necessary, the United States DENIES the allegations  
3 of Paragraph 142 of Plaintiff's SAC.

4           143. The United States lacks information sufficient to admit or deny the  
5 allegations in Paragraph 143 of Plaintiff's SAC and therefore DENIES the same.

6           144. The United States lacks information sufficient to admit or deny the  
7 allegations in Paragraph 144 of Plaintiff's SAC and therefore DENIES the same. The  
8 United States further avers that it has no control over the actions of the Hualapai Tribe or  
9 its employees.  
10

11           145. The United States lacks information sufficient to admit or deny the  
12 allegations in Paragraph 145 of Plaintiff's SAC and therefore DENIES the same.  
13

14           146. The United States lacks information sufficient to admit or deny the  
15 allegations in Paragraph 146 of Plaintiff's SAC and therefore DENIES the same. The  
16 United States further avers that it has no control over the actions of the Hualapai Tribe or  
17 its employees.  
18

19           147. The United States lacks information sufficient to admit or deny the  
20 allegations in Paragraph 147 of Plaintiff's SAC and therefore DENIES the same. The  
21 United States further avers that it has no control over the actions of the Hualapai Tribe or  
22 its employees.  
23

24           148. The United States lacks information sufficient to admit or deny the  
25 allegations in Paragraph 148 of Plaintiff's SAC and therefore DENIES the same. The  
26

1 United States further avers that it has no control over the actions of Fann Contracting or its  
2 employees.

3 149. The United States lacks information sufficient to admit or deny the  
4 allegations in Paragraph 149 of Plaintiff's SAC and therefore DENIES the same. The  
5 United States further avers that it has no control over the actions of Fann Contracting, the  
6 Hualapai Tribe or their employees.  
7

8 150. The United States lacks information sufficient to admit or deny the  
9 allegations in Paragraph 150 of Plaintiff's SAC and therefore DENIES the same.  
10

11 151. The United States ADMITS that Nigel Turner has been arrested twice for  
12 incidents relating to his interaction with the Hualapai Tribe, Fann Contracting, and/or the  
13 traveling public in and around the construction site at issue. Defendant lacks information  
14 sufficient to admit or deny the allegations in Paragraph 151 of Plaintiff's SAC and  
15 therefore DENIES the same. The United States further avers that it has no control over the  
16 actions of Fann Contracting, the Hualapai Tribe or their employees.  
17

18 152. The United States lacks information sufficient to admit or deny the  
19 allegations in Paragraph 152 of Plaintiff's SAC and therefore DENIES the same.  
20

21 153. The United States lacks information sufficient to admit or deny the  
22 allegations in Paragraph 153 of Plaintiff's SAC and therefore DENIES the same.  
23

24 154. The United States lacks information sufficient to admit or deny the  
25 allegations in Paragraph 154 of Plaintiff's SAC and therefore DENIES the same.  
26

27 155. The United States ADMITS that the Ranch possesses grazing permits on  
28 some portions of BLM land. The terms of those permits speak for themselves and are the

1 best evidence of their contents. The United States DENIES any insinuation that grazing  
2 permits would give a permit holder the right to interfere with other uses of land, including  
3 the building of a roadway. The United States DENIES the remaining allegations of  
4 Paragraph 155 of Plaintiff's SAC.  
5

6 156. The allegations of Paragraph 156 are conclusions of law to which no  
7 answer is required. Inasmuch as an answer is necessary, the United States DENIES the  
8 same.  
9

10 157. The United States lacks information sufficient to admit or deny the  
11 allegations in Paragraph 157 of Plaintiff's SAC and therefore DENIES the same.

12 158. The United States lacks information sufficient to admit or deny the  
13 allegations in Paragraph 158 of Plaintiff's SAC and therefore DENIES the same.  
14

15 159. The United States lacks information sufficient to admit or deny the  
16 allegations in Paragraph 159 of Plaintiff's SAC and therefore DENIES the same.

17 160. The United States lacks information sufficient to admit or deny the  
18 allegations in Paragraph 160 of Plaintiff's SAC and therefore DENIES the same. The  
19 United States further avers that it has no control over the actions of the Hualapai Tribe or  
20 its employees.  
21

22 161. The United States lacks information sufficient to admit or deny the  
23 allegations in Paragraph 161 of Plaintiff's SAC and therefore DENIES the same. The  
24 United States further avers that it has no control over the actions of the Hualapai Tribe or  
25 its employees.  
26  
27  
28

1           162.    The allegations of Paragraph 162 are conclusions of law to which no  
2 answer is required. Inasmuch as an answer is necessary, the United States DENIES the  
3 same. The United States further avers that it has no control over the actions of the Hualapai  
4 Tribe or its employees.  
5

6           163.    The allegations of Paragraph 163 are conclusions of law to which no  
7 answer is required. Inasmuch as an answer is necessary, the United States DENIES the  
8 same. The United States further avers that it has no control over the actions of the Hualapai  
9 Tribe or its employees.  
10

11           164.    The allegations of Paragraph 164 are conclusions of law to which no answer  
12 is required. Inasmuch as an answer is necessary, the United States DENIES the same. The  
13 United States further avers that it has no control over the actions of the Hualapai Tribe or  
14 its employees.  
15

16                                   **Count One – Breach of Contract**

17           165.    The statements contained in Paragraph 165 are statements of incorporation  
18 which do not require an answer. Inasmuch as an answer is necessary, the United States  
19 DENIES the same.  
20

21           166.    The United States ADMITS that the Settlement Agreement is a binding  
22 contract between Plaintiff and the BIA. The United States DENIES any remaining  
23 portions of Paragraph 166 of Plaintiff's SAC.  
24

25           167.    The allegations in Paragraph 167 are conclusions of law and do not require  
26 an answer. To the extent an answer is required, the United States DENIES the same.  
27  
28







184. The allegations in Paragraph 184 are conclusions of law and do not require an answer. To the extent an answer is required, the United States DENIES the same.

185. The allegations in Paragraph 185 are conclusions of law and do not require an answer. To the extent an answer is required, the United States DENIES the same. The United States further avers that that Plaintiff cannot obtain injunctive relief against the United States

186. The allegations in Paragraph 186 are conclusions of law and do not require an answer. To the extent an answer is required, the United States DENIES the same. The United States further avers that that Plaintiff cannot obtain injunctive relief against the United States.

## Prayer for Relief

A-F. The allegations contained in Paragraphs A-F of Plaintiff's SAC represent a prayer for relief to which no answer is required. Inasmuch as an answer is necessary, the United States DENIES the same.

**WHEREFORE**, having fully answered all counts of Plaintiff's Second Amended Complaint, Defendant prays that Plaintiff takes nothing by way of its Second Amended Complaint, that the same be dismissed, and that judgment be awarded in favor of Defendant, together with costs and all other just and proper relief.

## II UNITED STATES' AFFIRMATIVE DEFENSES

The United States hereby sets forth the following Affirmative Defenses to Plaintiff's Second Amended Complaint.

1           1.     Any allegation not admitted, controverted, or denied previously in this  
2 Answer is hereby DENIED.

3           2.     This Court lacks jurisdiction over some or all claims raised in Plaintiff's  
4 Second Amended Complaint.

5           3.     Portions of Plaintiff's Second Amended Complaint fail to state a claim upon  
6 which relief can be granted against the United States.

7           4.     Plaintiff has failed to exhaust its administrative remedies as to some or all of  
8 its claims.

9           5.     Plaintiff has failed to show a causal connection between Defendant's alleged  
10 conduct and any alleged injury in fact.

11           6.     Plaintiff's claims may be barred in whole or in part by the appropriate statute  
12 of limitations.

13           7.     All future damages, if any, must be reduced to present value.

14           8.     Plaintiff has failed to mitigate its damages, if any, and any recovery or other  
15 award to which it is found entitled should be reduced accordingly.

16           9.     At all times, Defendant acted in good faith toward Plaintiff.

17           10.    Plaintiff's claims are barred by the doctrines of collateral estoppel, res  
18 judicata, waiver and laches.

19           11.    Defendant contests the amount and/or necessity of any claim of monetary  
20 damages for which Plaintiff seeks relief in its Complaint.

21           12.    Plaintiff's damages, if any, are offset by collateral sources.

1           13. To the extent Plaintiff has or will receive any payment for its alleged injuries  
2 from any source, any award of damages is subject to set-off.

3           14. Plaintiff is not entitled to a jury trial in this matter.

4           15. Plaintiff has incorrectly pled fictitious defendants, which is not permitted  
5 under the Federal Rules.  
6

7           16. The Defendant cannot be held responsible for the actions of any entity  
8 outside of the BIA.

9           17. Plaintiff's allegations are improperly before this Court under the Tucker Act  
10 and must be transferred to the United States Court of Claims.  
11

12           18. Plaintiff is not entitled to injunctive relief against the United States.

13           19. Defendant reserves the right to allege any further and additional defenses it  
14 may have, including those which are not yet known but which may become known  
15 through future discovery, including those required by Federal Rules of Civil Procedure 8,  
16 11 and 12.  
17

### 18                           **III. UNITED STATES' COUNTERCLAIMS**

19  
20           For its Counter-claims against Plaintiff, the United States of America ("United  
21 States") alleges as follows:  
22

#### 23                                           **NATURE OF THE ACTION**

24           1. The United States brings this civil action against plaintiff Grand Canyon  
25 West Ranch, L.L.C. for trespass, unjust enrichment, and breach of contract based upon  
26 wrongful and unauthorized construction of a building across the center of an easement on  
27 Iron Basin Road owned by the United States.  
28

## **JURISDICTION**

2. The Court has subject matter jurisdiction to entertain this action pursuant to 28 U.S.C. § 1331 because the United States has asserted causes of action that arise under federal law and 28 U.S.C. § 1345 because this action was commenced by the United States.

3. The Court has supplemental jurisdiction to entertain the state-law causes of action pursuant to 28 U.S.C. § 1345 because this action was commenced by the United States and 28 U.S.C. § 1367(a) because the state-law causes of action are so related to claims over which the Court has original jurisdiction that they form part of the same case or controversy under Article III of the United States Constitution.

## **VENUE**

4. Venue is proper in this District under 28 U.S.C. § 1391(b) because Plaintiff/Counter-Defendant is located in this District, a substantial part of the events or omissions giving rise to the United States' claims occurred in this District, and a substantial part of the property that is the subject of this action is situated in this District.

## **PARTIES**

5. The United States brings this action on behalf of its agency, Department of the Interior ("DOI"), Bureau of Land Management ("BLM"). Among other things, BLM is responsible for (1) managing the nation's public lands and resources in a combination of ways which best serve the needs of the people; (2) sustaining the health, diversity, and productivity of the public lands for the use and enjoyment of present and future generations; and (3) recovering a fair return for the use of publicly owned resources for the

1 taxpayers. BLM administers approximately 12.2 million surface acres of public lands in  
2 Arizona, along with another 17.5 million sub-surface acres within the State.

3 6. Defendant Grand Canyon West Ranch, L.L.C., (“GCWR”) is a limited  
4 liability company, registered and located in the State of Arizona.  
5

## 6 **FACTUAL ALLEGATIONS**

### 7 **The United States’ Interest in the Land in Question**

8 7. This case involves an easement (hereinafter the “easement,” or “Right of  
9 Way”) within a parcel of land consisting of approximately 640 acres located in Mohave  
10 County, Arizona (Mohave County Parcel #318-08-014), which is more particularly  
11 described in Exhibit A attached hereto and incorporated herein by reference.

12 8. Plaintiff admitted in Document No. 21, Cause No. 2:13-cv-01855-NVW at  
13 p. 7, ln. 7, that “there is no defect in the [Right of Way].”

14 9. In 2003, GCWR filed a Quiet Title action against the United States. That  
15 lawsuit was resolved with a settlement in 2007 that, among other things, granted  
16 easements to the United States referred to as “New Diamond Bar Road” and “Iron Basin  
17 Road.” A true and accurate copy of the Settlement Agreement is attached hereto as Exhibit  
18 B and incorporated herein by reference.

19 10. The settlement agreement also required plaintiff to provide “a 100 foot wide  
20 easement... to connect the new road to the existing easement and dirt road, currently  
21 identified as the Iron Basin Road....” *Id.*, at paragraph 4 “Grant of Easements.” To date,  
22 plaintiff has failed to provide the full easement, as the current easement stops at an  
23 existing roadway and does not yet completely connect the new road to Iron Basin Road as  
24 required.

25 11. Sometime after the settlement, plaintiff caused or permitted the construction  
26 of a restaurant and a helicopter pad in the middle of Iron Basin Road, directly interfering  
27 with and impeding the easement owned by the United States.  
28

12. The United States learned of this incursion after receiving a letter from a company called Grand Canyon Frontier (“Frontier”) on April 19, 2013. Upon information and belief, Frontier operates the restaurant pursuant to an agreement with GCWR. The restaurant is built across Iron Basin Road – the easement held by the United States. Upon information and belief, Frontier is operated by Canyon Ranch Adventures, L.L.C.

13. The United States has refrained from bringing a trespass action up to this time in order to facilitate settlement. As plaintiff has failed to demonstrate any interest in restoring the easement or otherwise resolving this dispute, this action is necessary in order to vindicate and protect the property rights of the United States. The United States does not seek to have the offending properties removed from its property, as this would potentially cause great financial harm to plaintiff and/or Frontier. Instead, the United States seeks an order that remedies the trespass through provision of a new easement for a new alternate route that satisfies the goals of the 2007 agreement.

### **CAUSES OF ACTION**

#### **FIRST CAUSE OF ACTION**

(Trespass – Federal Common Law)

14. The United States reasserts all previous allegations.

15. Plaintiff has intruded, or has caused a third party to intrude, onto the easement held by the United States. This intrusion is intentional or negligent, and has been ongoing for several months and continues to this day. This trespass constitutes an interference with the rights of the United States to control the property and renders the current easement untenable for its intended use as a road.

16. As a result of plaintiff’s conduct, as alleged in this counterclaim, the United States has been deprived of the use of the property for a period of no less than a year.

17. The United States is entitled to the full value, in an amount to be proven at trial, of the incursions by plaintiff, its employees, and/or its assignees into the easements

1 held by the United States. In addition, the United States is entitled to injunctive relief in  
2 order to remedy this long-term disruption to the possessory interest held by the United  
3 States.

## 4 5 SECOND CAUSE OF ACTION

6 (Trespass – Arizona Law)

7 18. The United States reasserts all previous allegations.

8 19. Plaintiff has intruded, or has caused a third party to intrude, onto the  
9 easement held by the United States. This intrusion is intentional or negligent, and has  
10 been ongoing for several months and continues to this day. This trespass constitutes an  
11 interference with the rights of the United States to control the property and renders the  
12 current easement untenable for its intended use as a road.

13 20. As a result of plaintiff's conduct, as alleged in this counterclaim, the United  
14 States has been deprived of the use of the property for a period of no less than a year.

15 21. The United States is entitled to the full value, in an amount to be proven at  
16 trial, of the incursions by plaintiff, or by plaintiff's business partner(s), into the easement  
17 held by the United States. If this Court finds that the trespass was willful, treble damages  
18 should be awarded pursuant to Arizona law. In addition, the United States is entitled to  
19 injunctive relief in order to remedy this long-term disruption to the possessory interest  
20 held by the United States.

## 21 22 THIRD CAUSE OF ACTION

23 (Unjust Enrichment)

24 22. The United States reasserts all previous allegations.

25 23. This is a claim for the recovery of monies, in an amount to be determined at  
26 trial, by which plaintiff has been unjustly enriched at the United States' expense, namely,  
27 the monies paid to plaintiff by Frontier and or any other entities that infringed onto the  
28 easement held by the United States and paid fees to plaintiff.

1           24. The United States had and continues to have a reasonable expectation of  
2 payment of the monies paid to plaintiff by Frontier and others for use of the easement  
3 owned by the United States.

4           25. Plaintiff should reasonably have expected and should reasonably be  
5 expected to pay to the United States the monies Frontier and others paid to plaintiff.

6           26. Society's reasonable expectations of person and property would be defeated  
7 by plaintiff's nonpayment to the United States of the monies Frontier and others paid to  
8 GCWR.

#### 9                                           FOURTH CAUSE OF ACTION

##### 10                                           (Breach of Contract)

11           27. The United States reasserts all previous allegations.

12           28. The 2007 settlement agreement between the parties, attached hereto as  
13 Exhibit B, constitutes an enforceable, written contract.

14           29. Plaintiff breached the agreement by causing the intrusion onto the easement  
15 by Frontier, as outlined above. Moreover, plaintiff has failed to supply the entire easement  
16 to Iron Basin Road as required by paragraph 4 "Grant of Easements" of the agreement.  
17 The easement actually provided by plaintiff covers only part of what is needed to fulfill  
18 the agreement and permit the United States to complete the road. As there is no adequate  
19 remedy at law, the United States is entitled to injunctive relief that provides it with the full,  
20 functional easement that will enable it to build a road as agreed to by the parties in the  
21 2007 settlement agreement.

22           30. By the terms of the written agreement, at paragraph 13, the United States is  
23 entitled to recover reasonable attorney's fees incurred in the enforcement of the provisions  
24 of the agreement. In addition, the United States is entitled to attorney's fees pursuant to  
25 Arizona Revised Statutes § 12-341.01.  
26  
27  
28



**PRAYER FOR RELIEF**

**WHEREFORE**, the United States demands and prays that judgment be entered in favor of the United States as follows:

A. On the First and Second Causes of Action for trespass, for the full value, in an amount to be proven at trial, of the incursions by plaintiff, or by plaintiff's business partner(s), into easements held by the United States, plus interest, attorney's fees, costs, expenses, and such further relief as may be just and proper. In addition, the United States is entitled to injunctive relief, and if the trespass was willful, treble damages.

B. On the Third Cause of Action for unjust enrichment, for the damages sustained by defendants and/or amounts by which plaintiff was unjustly enriched, in an amount to be proven at trial, plus interest, attorney's fees, costs, expenses, and such further relief as may be just and proper.

C. On the Fourth Cause of Action for breach of contract, injunctive relief and for the difference in value between the easements provided and the easements required by the agreement, in an amount to proven at trial, plus interest, attorney's fees, costs, expenses, and such further relief as may be just and proper.

Respectfully submitted this 24th day of October, 2013.

JOHN S. LEONARDO  
United States Attorney  
District of Arizona

s/ Peter M. Lantka  
PETER M. LANTKA  
Assistant United States Attorney

**CERTIFICATE OF SERVICE**

I hereby certify that on October 24, 2013, I electronically transmitted the attached document to the Clerk's Office using the CM/ECF System for filing and transmittal of a Notice of Electronic Filing to the following CM/ECF registrants:

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s/Mary C. Bangart  
U.S. Attorney's Office